

The Family and Medical Leave Act (FMLA)

Highlights of Recent Changes

Sheryl Jensen
Human Resources

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iLinc Features

Raise your hand to ask a question

To type a message for the Chat area

More information can be found at the DAS Benefits Web site - <http://das.hrs.iowa.gov/benefits.html>

Agenda

- Changes to FMLA
 - Required Posting
 - Required Employer Notices
 - Required Employee Notice
 - Certification Forms
 - Clarification and Authentication
 - New Certification, Fitness for Duty, Light Duty, Compensatory Leave, and Overtime
- Military Family Leave
 - Qualifying Exigency Leave
 - Military Caregiver Leave
- Questions


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Background Information

- **Effective Dates**
 - Medical FMLA
 - August 5, 1993 – Non-contract
 - February 5, 1994 – Contract-covered
 - Military Family Leave
 - January 28, 2008 – Military Caregiver
 - January 16, 2009 – Qualifying Exigency


4 More information can be found at the DAS Benefits Web site - <http://das.hre.iowa.gov/benefits.html>



Background Information

- **Eligibility for FMLA**
 - 12 months of employment with the state during the past seven years
 - 1,250 hours worked in the 12 months immediately preceding the date leave is to begin
- **Maximum Length of Leave**
 - Up to 12 weeks of medical and/or qualifying exigency FMLA leave in a fiscal year
 - Up to 26 weeks of military caregiver leave in a 12 month period
 - Continuous, intermittent or reduced schedule leave


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Background Information

- **Qualifying Reasons for FMLA Leave**
 - Birth of a son or daughter and to care for the newborn child
 - Placement of a son or daughter for adoption or foster care
 - Care for the employee's spouse, son, daughter or parent with a serious health condition
 - Serious health condition that makes the employee unable to perform the functions of the employee's job
 - Qualifying exigency for covered military member
 - Care for ill or injured covered servicemember


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Changes to Definitions

- Continuing Treatment
 - Incapacity of more than 3 calendar days and treatment
 - Treatment
 - » Two or more times by health care provider within 30 days of the first day of incapacity
 - » Treatment by health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of a health care provider
 - » First visit – within 7 days of the first day of incapacity
- Chronic conditions
 - 2 or more visits to a health care provider per year

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Required Posting

Employee Rights And Responsibilities Under The Family And Medical Leave Act

- Provided to each employee when hired
- Printed and posted for employees that do not have access to computers at work
- Visible to all job applicants
- Poster is available
 - DAS State Employment Web site
 - DAS Benefits Web site
- Included with the January 16 online and paper pay warrant



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Required Employer Notices

Two New Notices

- 1. Notice of Eligibility and Rights & Responsibilities**
 - Provided to an employee within 5 business days of the date
 - An employee requests FMLA
 - Employer becomes aware that an employee's leave may be FMLA-qualifying
- 2. Designation Notice**
 - Provided to an employee once employer has sufficient information to determine if leave is FMLA-covered
 - Employee must be notified within 5 business days that the leave has been designated as FMLA or does not qualify
 - Must provide reason for ineligibility if leave does not qualify
 - Essential functions must be attached if fitness-for-duty will be required
 - One per condition per leave year

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Required Employee Notice

- Family and Medical Leave Application (CFN 552-0599)
- Employees must follow call-in procedures
- Calling in sick is not considered sufficient notice
- Leave may be denied if the employee fails to adequately explain the reason for leave
- Employee must inform you if the leave is for a reason which was previously certified



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NEW!

Employee Medical Certification Form


Certification of Health Care Provider for Employee's Serious Health Condition (Form WH-380-E)

- Provides space for employee's essential job functions
- Check off to indicate that the employee's job description is attached

Employee allowed 7 calendar days to provide the additional information if the certification is incomplete or insufficient



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NEW!

Family Member Medical Certification Form


Certification of Health Care Provider for Family Member's Serious Health Condition (Form WH-380-F)

- Asks for detailed information about the family members' condition
- Amount of time the employee might need to care for the family member

Employee allowed 7 calendar days to provide additional information if the certification is incomplete or insufficient



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Clarification and Authentication

- Employer may contact the health care provider to
 - Clarify information on medical certification form
 - Authenticate medical certification form
- Limited to contacting health care provider to:
 - understand handwriting on the certification
 - understand the meaning of a response
 - request verification that information on the certification form was completed and/or authorized by the health care provider who signed the document
- No additional medical information may be requested

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Clarification and Authentication

- HIPAA requirements must be satisfied when employee health information is shared with an employer by a HIPAA-covered health care provider
- If employee does not provide a required HIPAA release, leave may be denied.
- If employee does not authorize employer to clarify the certification with the health care provider, and does not otherwise clarify the certification, FMLA leave may be denied
- Employee's responsibility to provide complete and sufficient certification and to clarify if necessary

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Clarification and Authentication

- Employer contact must be made by
 - Health care professional
 - Human resources professional
 - Leave administrator
 - Management official
 As determined by the employing department
- **Under no circumstances may the employee's direct supervisor contact the employee's health care provider**

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New Medical Certifications

- Leave approval is on fiscal year basis
- If the need for leave lasts beyond the fiscal year employee can be required to provide a new medical certification in each subsequent fiscal year
 - Second opinion can be requested on new certification

EXAMPLE:

John provides a certification for intermittent leave on March 1st. The duration is “unknown”; leave is approved to the end of the fiscal year (June 30). John can be required to provide a new certification at the start of the new fiscal year on July 1 and a second opinion can be requested.

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Fitness for Duty

- Employer may require a fitness-for-duty certification
 - Continuous or intermittent leave
 - No more often than every 30 days for intermittent
- May require certification to specifically address the employee’s ability to perform the essential functions of their position
- The employee must be provided with a list of essential functions of their job no later than when they are given the Designation Notice

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Light Duty

- Time that an employee spends working light duty does not count toward the 12 week FMLA entitlement during the leave year

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Compensatory Leave

- Employees must use
 - Accrued compensatory leave
 - Holiday compensatory time
 - Banked holidays


During periods of FMLA leave



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Inability to Work Overtime

- Missed overtime must be counted against an employee's FMLA entitlement if the employee would have been required to work overtime but for their FMLA condition



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Military Family Leave

- **Qualifying Exigency Leave**
 - Leave taken by an eligible employee for any qualifying exigency arising out of the fact that a covered military member (National Guard or Reserve) is on active duty or call to active duty status
- **Military Caregiver Leave**
 - Leave taken by an eligible employee to care for a covered servicemember with a serious injury or illness

Eligible Employee for Military Family Leave

	Qualifying Exigency Leave	Military Caregiver Leave
Parent	✓	✓
Spouse	✓	✓
Son	✓	✓
Daughter	✓	✓
Next of Kin		✓



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Military Family Leave

- Eligibility Requirement for Military Family Leave
 - 12 months of employment with the State in the past 7 years
 - 1,250 hours worked in the 12 months immediately preceding the date leave is to begin

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Son or daughter

- Son or daughter of a covered servicemember
 - Biological, adopted, foster or stepchild, legal ward, or child for whom the service member stood in loco parentis
 - Of any age
- Son or daughter on active duty or call to active duty
 - Employee's biological, adopted, foster or stepchild, legal ward, or child for whom the employee stood in loco parentis
 - Of any age
 - On active duty or call to active duty status in support of a contingency operation

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Qualifying Exigency

- Short-notice deployment
- Military events and related activities
- Childcare and school activities – not routine child care
- Financial and legal arrangements – up to 90 days after service ends
- Counseling
- Rest and recuperation – short-term only, up to 5 days
- Post-deployment activities – up to 90 days after service ends
- Additional activities – as agreed upon by employer and the employee

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Qualifying Exigency Leave

- **Maximum Length of Leave**
 - 12 weeks of qualifying exigency leave
- **Covered Military Member**
 - Employee's spouse, son, daughter or parent who is on active duty or call to active duty
- **Active Duty or Call to Active Duty Status**
 - A member of the National Guard or Reserves
 - Under a call or order to active duty in support of a contingency operation
 - Not regular armed forces
- **No recertification**


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Request Qualifying Exigency Leave

Certification of Qualifying Exigency for Military Family Leave (Form WH-384)



An employee must provide notice of the need for qualifying exigency leave as soon as practicable.

26 More information can be found at the DAS Benefits Web site - <http://das.hre.iowa.gov/benefits.html>



Military Caregiver Leave


- **Covered Servicemember**
 - Current member of Armed Forces (including National Guard or Reserve)
 - On temporary disability retired list
 - Serious injury or illness incurred in the line of duty on active duty
 - Undergoing medical treatment, recuperation, or therapy, or otherwise in outpatient status
 - Not former members of the Armed Forces, former members of the National Guard and Reserves, and members on the permanent disability retired list

27 More information can be found at the DAS Benefits Web site - <http://das.hre.iowa.gov/benefits.html>



Military Caregiver Leave

- **Serious Injury or Illness**
 - Injury or illness incurred by a covered servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating

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Eligible Employees

Employees eligible for military caregiver leave:


- Spouse
- Son
- Daughter
- Parent
- Next of kin

Of covered servicemember

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Next of Kin

- **Nearest blood relative other than spouse, parent, son, or daughter, in order of priority:**
 - Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions
 - Brothers and sisters
 - Grandparents
 - Aunts, uncles and first cousins
- Unless service member has designated another blood relative as next of kin


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Military Caregiver Leave

- **Maximum Length of Leave**
 - Up to 26 weeks of military caregiver leave in a 12 month period
 - 12 month period starts on the first day the employee takes military caregiver leave
 - Any combination of absences in the 12 month period, including medical FMLA, may not exceed 26 weeks
- **Use of Leave - “per member” and “per injury”**
 - Use leave to care for the same family member with different illness or injury or
 - Use leave for a different family member
- **No second or third opinion**




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Request Military Caregiver Leave

Certification for Serious Injury or Illness of Covered Servicemember – for Military Family Leave (Form WH-385)


- Must provide 30 days advance notice for planned medical treatment for a serious injury or illness of a covered servicemember.
- When 30 days advance notice is not possible, the employee must provide notice as soon as practicable
- When the need for leave is unforeseeable, an employee must comply with an employer's normal notice or call-in procedures, absent unusual circumstances.



32 More information can be found at the DAS Benefits Web site - <http://das.hre.iowa.gov/benefits.html>


FMLA Resource

DAS Benefits FMLA Web Site
<http://das.hre.iowa.gov/benefits/fmla.html>



Some of the Information Available:

- Link to the Managers and Supervisors Manual 6.90
- DOL Frequently Asked Questions regarding FMLA and the Military Family Leave
- Highlights of the recent changes in FMLA and the Military Family Leave
- Forms
- Benefit Guide – FMLA and Extended Illness, Long Term Disability and Death




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Additional Resources

- PDS Training:
<http://das.hre.iowa.gov/LearnAtPDS>
- Personnel Officer
- Department of Labor web site:
<http://www.dol.gov/esa/whd/fmla/finalrule.htm>

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FMLA Questions



Sheryl Jensen
515-281-8866
Sheryl.jensen@iowa.gov

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Questions



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